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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 636

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

NEW ENGLAND ELECTRIC SYSTEM, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (R. 1455-1471) is reported at 346 F. 2d 399. The findings and opinion of the Securities and Exchange Commission, dated March 19, 1964 (R. 1254-1282), are reported in the Commission's Holding Company Act Release No. 15096.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 1965 (R. 1471-1472). On September 2, 1965, Mr. Justice Black extended the time to file a petition for a writ of certiorari to October 2, 1965. The petition was filed on October 1, 1965, and was

granted on December 13, 1965 (R. 1472). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 11(b)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79k(b)(1), permits a registered holding company to control one or more integrated public-utility system in addition to its principal integrated system only if the Commission finds, *inter alia*, that "Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system * * *." The question presented is whether the court below erred in rejecting the Commission's longstanding interpretation that, under this provision, "the loss of substantial economies" must be such as to render the additional system incapable of sound and economical operation independent of the principal system and in holding instead that the required loss is merely one which, in ordinary business parlance, is of a substantial nature.

STATUTE INVOLVED

Section 11(b)(1) of the Public Utility Holding Company Act of 1935, 49 Stat. 820, 15 U.S.C. 79k(b)(1), provides in pertinent part:

It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commis-

sion shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, * * * *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system * * *.

Pertinent parts of Section 1 and Section 2(a)(29) of the Act are set forth in an Appendix, *infra*, pp. 41-44.

STATEMENT

On August 5, 1957, the Securities and Exchange Commission instituted proceedings under Section 11 (b)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79k(b)(1), to determine the extent to which New England Electric System ("NEES"), a holding company registered under Section 5 of the Act, 15 U.S.C. 79e, could lawfully retain control over the electric, gas and other properties in its holding company system. The initial phase of the proceedings terminated on February 20, 1958, when the Commission held that the electric utility subsidiaries of NEES comprised an "integrated electric utility system" as defined in Section 2(a)(29)(A), 15 U.S.C. 79b(2)(29)(A).¹ NEES elected to retain

¹ *New England Electric System*, 38 S.E.C. 193.